United Nations CED/C/IRQ/Q/1

International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by Iraq under article 29, paragraph 1, of the Convention*

I. General information

1. Please indicate whether the State party envisages making the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications.

2. Please provide information about existing mechanisms for dealing with requests for urgent action transmitted by the Committee to the State party under article 30 of the Convention and for implementing the interim and protection measures requested by the Committee in this connection. Please also indicate whether the section created within the headquarters of the Office of the Public Prosecutor, referred to in paragraph 48 of the State party's report (CED/C/IRQ/1), is competent to deal with the requests for urgent action transmitted by the Committee and, if so, please elaborate further on its mandate, powers and activities undertaken so far in that respect.

3. Please provide information about the status of the Convention vis-à-vis domestic law, including the Constitution; indicate whether the provisions of the Convention can be directly invoked before and applied by courts or other relevant authorities; and provide examples of case law, if any, in which the provisions of the Convention have been invoked before or applied by courts or other relevant authorities.

4. Please provide information about activities carried out by the High Commission for Human Rights in relation to the Convention, including specific examples. Please also indicate whether the High Commission has received any complaints concerning enforced disappearances since it started functioning and, if so, please provide detailed information about the action taken when considering them and the results thereof. In this respect, please include statistical information on the number of complaints it received regarding enforced disappearances, disaggregated by sex, age (adult/minor), ethnic group or religious affiliation of the victim, and year and place of disappearance; the number of those complaints that were investigated; and the results of the investigations, including how many of those investigations resulted in the initiation of criminal proceedings. Please also provide

* Adopted by the Committee at its eighth session (2–13 February 2015).

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information on the measures taken to ensure that the High Commission has the resources needed for the proper discharge of its functions.

II. Definition and criminalization of enforced disappearance (arts. 1–7)

5. Please provide updated statistical information, disaggregated by year and place of disappearance, on the number of reported missing persons in the State party whose fate and whereabouts remain unknown, specifying the number of those persons who are presumed to have been subjected to enforced disappearance. Please also provide detailed information about the database on victims of enforced disappearance maintained by the Ministry of Human Rights (para. 123 of the State party's report), including the number of cases recorded in the database; the kinds of information entered with regard to each reported case; whether it centralizes information on all reported cases throughout the State party; measures in place to ensure that it is up-to-date; whether it is accessible to all interested parties; how the confidentiality of protected personal information is maintained; and measures taken to ensure that the information in the database is easily crossed-checked with other information, such as registers of persons deprived of liberty (arts. 1 and 24).

6. Please indicate whether, during a state of war or a threat of war, internal political instability or any other public emergency, the national legal framework provides for the possibility of derogating from any of the rights and/or procedural guarantees that may be embodied in domestic law or international human rights instruments to which Iraq is a party and that might be relevant for preventing and combating enforced disappearances. If so, please enumerate the rights and/or procedural guarantees from which it is possible to derogate and indicate in which circumstances, under which legal provisions and for how long it is permissible to do so (art. 1).

7. Please update the Committee on the current status of the bill being drafted by the Ministry of Human Rights to implement the Convention, referred to in paragraph 36 of the State party's report, including when it is envisaged that it can be submitted to parliament and/or adopted. If an advanced draft already exists, please also provide detailed information on its content, in particular on the proposed definition of enforced disappearance and its penalties and on whether specific aggravating and mitigating circumstances are envisaged. In relation to paragraph 54 of the State party's report, please also explain how article 5 of the Convention "will be taken into account" in the context of the adoption of legislation to implement the Convention. If a draft already exists of the definition of enforced disappearance as a crime against humanity and the consequences that its perpetration will entail, including penalties and statute of limitations, please provide information in that respect. Please also indicate whether relevant civil society actors, in particular victims and associations of victims, have or have had a role in the process of preparing the bill (arts. 2, 4, 5, 6, 7 and 24).

8. While conscious of the challenges posed by the abuses reportedly committed in the State party by the so-called Islamic State in Iraq and the Levant and associated groups, the Committee would appreciate information about the efforts made to investigate the commission of the acts defined in article 2 of the Convention by these or any other groups of persons acting without the authorization, support or acquiescence of the State, and to bring those responsible to justice. In doing so, please include statistical information (art. 3).

9. Taking into consideration the information provided in paragraphs 62 and 63 of the State party's report with regard to the criminal liability of military authorities following the issuance of illegal orders, please indicate whether there are any equivalent provisions that would apply to other State officials, such as the police. Please also indicate whether

domestic law provides for a system of responsibility of superiors that is in line with article 6, paragraph 1, subparagraph (b), of the Convention and, if not, whether there are any initiatives to incorporate such a system, in particular in the framework of the bill being drafted to implement the Convention. Please clarify whether the justifications set out in article 40 of the Criminal Code may potentially be applied with regard to persons involved in the commission of an enforced disappearance. In relation to the information provided in paragraph 141 of the State party's report, please provide additional information about the cases involving orders or instructions prescribing, authorizing or encouraging an enforced disappearance that have been identified, including the investigations carried out, their results, and the penalties imposed on those involved (arts. 6 and 23).

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

10. Please comment on the compatibility of article 10 of the Criminal Code, requiring that an Iraqi citizen be present in Iraq for an offence perpetrated abroad to be punishable in the State party, with article 9, paragraph 1 (b), of the Convention. Please also comment on the compatibility of article 11 of the Criminal Code, concerning the non-applicability of the Code to certain categories of persons, with the obligations stemming from article 9 of the Convention. Furthermore, while taking note of article 13 of the Criminal Code and the information provided in paragraph 77 of the State party's report, the Committee would appreciate clarification of whether the State party's domestic law establishes its competence to exercise jurisdiction in the circumstances described in article 9, paragraph 2, of the Convention (art. 9).

11. In relation to the information provided in paragraph 79 of the State party's report, please indicate whether all reports of enforced disappearance allegedly committed by military personnel, including those perpetrated against other military personnel, are investigated from the very outset by civilian authorities, and whether military authorities may provide assistance to civilian authorities in investigating cases of enforced disappearance. Please explain which offences constitute "offences not involving the personal right of a third party" (art. 11).

12. Please provide updated statistical information covering the period that has elapsed since the entry into force of the Convention, disaggregated by gender, age (adult/minor), ethnic group or religious affiliation of the victim, and year and place of disappearance, regarding: (a) the number of reports of enforced disappearance received; (b) investigations conducted and their outcomes, including the sentences handed down to perpetrators; and (c) reparation awarded to victims. In relation to paragraph 122 of the State party's report, please provide detailed information about the "enforced disappearance file" prepared by the Ministry of Human Rights and about the investigations carried out into the cases in this file and the results thereof. In relation to paragraph 123 of the State party's report, please provide information about the case in which the persons accused were found guilty of a criminal act of enforced disappearance, including the criminal offences applied, and indicate the status of the investigations concerning the other allegations of enforced disappearance. Furthermore, please comment on allegations that, throughout 2014, militias committed acts that may amount to enforced disappearances, as they reportedly abducted people with the authorization, support or acquiescence of State officials. In that respect, please provide information about the measures taken to investigate and punish all those involved, and the results thereof (arts. 12 and 24).

13. In relation to the enforced disappearances allegedly committed between 1968 and 2003 and the information provided in paragraphs 12 to 18 of the State party's report, please indicate whether there remain any investigations under way before the Iraqi Supreme

Criminal Tribunal or other tribunal and, if so, please provide information about them. Please also indicate whether reports have been received of people being subjected to enforced disappearance in any territory under the jurisdiction of the State party between 2003 and the entry into force of the Convention, including by officials of other States or by persons or groups of persons acting with the authorization, support or acquiescence of the officials of another State. If so, please provide detailed information, including on the measures taken to undertake investigations, to prosecute and punish the perpetrators, and to search for the disappeared persons, and the results thereof (arts. 12 and 24)

14. In relation to the competent authorities in charge of investigating and prosecuting cases of enforced disappearance, please provide information on: (a) the structure of the relevant organs; (b) whether their officials are specialized and/or trained in the investigation of enforced disappearances; (c) the resources at their disposal; and (d) the effectiveness of their activities (art. 12).

15. Please explain whether, besides those set out in articles 47 and 57 of the Code of Criminal Procedure, domestic law provides other mechanisms to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation into an enforced disappearance, are effectively protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given. If so, please provide detailed information in that respect (art. 12).

16. In relation to article 17 of the State Officials Discipline Act, please provide information on: (a) whether this provision applies to all State agents, including military personnel; (b) whether it is possible to extend the suspension for the entire duration of the investigation; (c) whether the authorities in charge of the criminal investigation may order and/or request the suspension of the official concerned; and (d) the composition of the committee that may recommend the suspension of an official, mentioned in paragraph 2 of this provision, and the basis on which it can make such recommendations. Please also indicate whether there are any mechanisms in place to exclude a law enforcement or security force, whether civilian or military, from the investigation into an enforced disappearance when one or more of its members are accused of committing the offence or of having been involved in the commission of the offence (art. 12).

IV. Measures to prevent enforced disappearances (arts. 16–23)

17. Please provide information about the authorities responsible for determining the expulsion, return, surrender or extradition of persons. Please also indicate whether it is possible to appeal a decision on expulsion, return, surrender or extradition, and if so, please indicate before which authorities, what the applicable procedures are, and whether they have suspensive effect. Furthermore, please provide detailed information about the mechanisms and criteria applied in the context of procedures of expulsion, return, surrender or extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance, including in the framework of deportations or expulsions ordered under the Foreigners' Residency Act described in paragraph 113 of the State party's report. Please indicate whether the State party envisages incorporating into its domestic legislation an explicit prohibition on carrying out an expulsion, return, surrender or extradition where there are substantial grounds for believing that the person would be in danger of being subjected to enforced disappearance (art. 16).

18. Please provide detailed information about the measures taken to guarantee in practice that no one is subjected to secret detention. Please give information about reports received concerning the alleged existence of places where people have been held in secret

detention and, in this respect, please provide information about: (a) investigations conducted and their outcomes, including the number of secret detention facilities identified and measures taken in that respect; (b) sentences handed down to those responsible; and (c) reparation awarded to victims, including rehabilitation. In this respect, please also comment on allegations that there are people still being held in secret detention, in places such as Camp Justice in north-west Baghdad and Camp Honor in Baghdad's Green Zone, and provide detailed information about the steps taken in that respect (art. 17).

19. Please indicate whether up-to-date registers are kept of all persons deprived of their liberty, regardless of the nature and location of the place of deprivation of liberty, which include all the information listed in article 17, paragraph 3, of the Convention, beyond the basic information to be included in registration books as provided for in section 3 of (dissolved) Coalition Provisional Authority Memorandum No. 2 of 2003. Please also provide further information on the measures taken to ensure that all records of persons deprived of liberty are properly and immediately completed and kept up-to-date. In addition, please indicate whether there have been any complaints concerning the failure by officials to record a deprivation of liberty or any other pertinent information in registers concerning persons deprived of liberty and, if so, please provide information about the proceedings initiated and, if relevant, the sanctions imposed and the measures taken to ensure that such omissions are not repeated, including training imparted to the personnel in question (arts. 17 and 22).

20. In relation to section 30, paragraph 13, of (dissolved) Coalition Provisional Authority Memorandum No. 2 of 2003, please provide detailed information about the restrictions that may be applied in relation to the right of untried prisoners to immediately inform their family of the detention and/or receive a family visit. Please clarify whether these restrictions also apply to the right of prisoners to inform their family about their transfer to another institution, as stipulated in section 18, paragraph 3, of the above-mentioned memorandum. In addition, please comment on allegations that the right of prisoners to immediately inform their family of their imprisonment and/or transfer to another institution is not always guaranteed in practice (arts. 17 and 18).

V. Measures for reparation and for the protection of children from enforced disappearance (arts. 24 and 25)

21. In relation to paragraph 143 of the State party's report, please indicate whether any steps have been taken to adopt a definition of victim that is in line with that contained in article 24, paragraph 1, of the Convention. Furthermore, and bearing in mind article 10 of the Code of Criminal Procedure, please indicate who would be responsible for providing compensation and/or reparation under domestic law in the event of an enforced disappearance when the perpetrator is not identified. Please also specify whether domestic law provides for all the forms of reparation for persons who have suffered harm as the direct result of an enforced disappearance set out in article 24, paragraph 5, of the Convention (art. 24).

22. Please provide detailed information about the compensation and/or reparation provided to persons who have suffered harm as a direct result of an enforced disappearance in the State party since the entry into force of the Convention, including by the organizations referred to in paragraph 19 of the State party's report. In particular, please include information about the number of persons that have received compensation and/or reparation, as well as the form of reparation granted to them, including whether the persons concerned have had access to rehabilitation services such as medical and psychological assistance. In relation to paragraphs 22, 23 and 154 to 157 of the State party's report concerning the assistance provided by the Kurdistan Regional Government to victims of the

Anfal campaign, please specify the number of persons who suffered harm as a direct result of an enforced disappearance that have received or continue to receive such assistance and include information about the type of assistance provided (art. 24).

23. Please provide further information about the application in practice of the Protection of Mass Graves Act, including financial, human and technical resources allocated for its effective implementation. In this respect, please also provide information about the measures taken, including existing mechanisms, to ensure that all mass graves are searched for and located. Furthermore, in relation to paragraph 20 of the State party's report, please clarify whether the Protection of Mass Graves Act is applicable only to mass graves of victims of the dictatorship between 1968 and 2003. If so, please provide information about the legal framework that would apply in the case of mass graves of victims of other periods. In relation to the information provided in paragraph 21 of the State party's report, please provide updated information about the number of mass graves found and include information about the number of persons located and identified. In doing so, please specify the period to which the mass graves correspond and their location. Please also indicate whether a database containing the DNA of family members of the disappeared persons and other ante-mortem information has been established and, if so, please provide information about its functioning. If such a database does not exist, please explain how remains are identified (art. 24).

24. Please indicate whether the issuance of a declaration of death in accordance with the provisions of the Welfare of Minors Act (Act No. 78 of 1980) has any impact on the obligation of the State party to continue the investigation until the fate of the disappeared person has been clarified. In relation to the information provided in paragraphs 149 and 150 of the State party's report, please indicate whether domestic law addresses matters, other than the management of assets, related to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, such as issues related to social welfare and family law (art. 24).

25. Please indicate whether, in the bill being prepared to implement the Convention referred to in paragraph 36 of the State party's report, the State party envisages specifically criminalizing the acts described in article 25, paragraph 1, of the Convention. Please also indicate whether any complaints concerning the wrongful removal of children in the terms described in article 25, paragraph 1 (a), of the Convention have been made and, if so, please provide information on such cases and on the measures taken to locate those children and prosecute and punish those responsible, and the results thereof (art. 25).

26. In relation to the information provided in paragraphs 160 to 162 of the State party's report, please indicate whether there are legal procedures in place to review and, where appropriate, annul a definitive foster care order that originated in an enforced disappearance. If so, please provide detailed information about such procedures. In the light of article 39 of the Juvenile Welfare Act, please also indicate whether domestic law provides for a system of foster care or other type of placement for orphan children who are older than nine years of age and, if so, please indicate whether there are any legal procedures in place to review and, where appropriate, annul a decision taken in that respect when the foster care or placement originated in an enforced disappearance (art. 25).